

## Message Text

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ORIGIN ERDA-07

INFO OCT-01 NEA-10 ISO-00 ACDA-10 CIAE-00 INR-07 IO-14  
L-03 NSAE-00 NSC-05 EB-07 NRC-07 OES-07 DODE-00  
SS-15 SP-02 FEA-01 AID-05 SSO-00 NSCE-00 INRE-00  
/101 R

DRAFTED BY ERDA:WNEUSTADT;JGLASGOW:RCM  
APPROVED BY NEA/INS:DKUX  
L:CSIEGAL  
OES:DCOOPER

-----006388 202310Z /61

O 202218Z JUL 77  
FM SECSTATE WASHDC  
TO AMCONSUL BOMBAY IMMEDIATE  
INFO AMEMBASSY NEW DELHI IMMEDIATE

UNCLAS STATE 169691

E.O. 11652:N/A

TAGS:TECH, IN

SUBJECT: TARAPUR FUEL STORAGE

REF: A. STATE 168761; B. BOMBAY 1685; C. BOMBAY 1200;  
D. BOMBAY 1629; E. STATE 164786;

1. BEGIN SUMMARY: AS FULLY EXPLAINED BELOW, USG HAS  
PROPOSED CHANGES IN TEXT OF AGREEMENT (NEW TEXT TRANSMITTED  
REFTEL A) IN ATTEMPT TO RESOLVE OUTSTANDING GOI CONCERNS.  
REGARDING GOI CONCERNS ABOUT PROPRIETARY DATA, ERDA HAS  
ARRANGED TO OBTAIN LIMITED RIGHTS TO PROPRIETARY DATA, THUS  
ALLOWING A FULL AND MORE USEFUL REPORT. NEW TEXT ALLOWS  
GOI TO USE PROPRIETARY DATA FOR ALL PURPOSES CONSISTENT  
WITH CLAUSE 8(E), INCLUDING DESIGN AND CONSTRUCTION, RELATED  
TO INCREASING THE SPENT FUEL CAPACITY AT TARAPUR. WE  
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BELIEVE NEW TEXT ALSO ELIMINATES GOI CONCERN THAT IT MIGHT  
AS A PRACTICAL MATTER BE "LOCKED" INTO DEALING WITH G.E.  
FOR DESIGN DATA. REVISED TEXT CONTEMPLATES PROVISION BY  
ERDA TO GOI OF PROPRIETARY INFORMATION WHICH WOULD ALLOW  
GOI TO MAKE INFORMED CHOICE ABOUT ALTERNATIVE METHODS OF  
ENHANCING FUEL STORAGE. NEW TEXT ACCEPTS MAJOR GOI  
REVISION OF CLAUSE 8(E) PERMITTING DATA TO BE USED BEYOND  
FEASIBILITY STUDY. WE NOTE, HOWEVER, THAT GOI SUGGESTION  
TO SUBSTITUTE "FOR" IN PLACE OF "OF" IN CLAUSE 8(E) MIGHT

BE READ AS COMMITTING ERDA TO PROVIDE AID IN INCREASING NUMBER OF SPENT FUEL POOLS AT TARAPUR. ADDITIONAL AID OF THIS NATURE WOULD RAISE COMPLEX POLICY AND LEGAL ISSUES REGARDING ERDA'S AUTHORITY. IF GOI INSISTED UPON THIS CHANGE IT WILL, AT THE LEAST, DELAY INITIATION OF STUDY. IF GOI WISHES TO PURSUE THIS MATTER, WE SUGGEST DISCUSSIONS SEPARATE FROM THE NEGOTIATIONS.

AS MORE FULLY EXPLAINED IN PARA 2 BELOW, G.E. INSISTS NEW FINAL SENTENCE TO INDEMNITY CLAUSE (CLAUSE 9) IS ESSENTIAL FOR THEIR SUPPLY OF PROPRIETARY DATA FOR THIS STUDY. GOI ACCEPTANCE OF NEW SENTENCE IN CLAUSE 9 WOULD ALLOW TYPE OF REPORT WHICH GOI HAS SAID IT WOULD FIND MEANINGFUL (PARA 7 REF B).

IF NEW TEXT OF AGREEMENT (REF A) RAISES SUBSTANTIVE PROBLEMS WITH GOI, USG IS OF COURSE WILLING TO RESTRICT SCOPE OF STUDY TO EXCLUDE PROPRIETARY INFORMATION. ALTHOUGH USEFULNESS OF SUCH A REPORT DIFFICULT TO JUDGE NOW, IT MIGHT PROVE VALUABLE TO GOI. EVEN WITH A LIMITED REPORT OF THIS SORT WITHOUT PROPRIETARY INFORMATION, G.E. WOULD REQUIRE ADDED SENTENCE RE INDEMNITY IN CLAUSE 9 SINCE ITS POTENTIAL LIABILITY DOES NOT DEPEND ON PROPRIETARY NATURE  
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OF DATE SUPPLIED. REGARDING GOI'S CONTINUING CONCERN ABOUT SCOPE OF STUDY (PARA 2, REF B), USG FEELS SCOPE OF WORK IS NOW CLEARLY SET FORTH IN CLAUSE 1 OF OUR COMPLETE TEXT (TRANSMITTED REF A). DESPITE FACT THAT ERDA HAS ALWAYS SPOKEN IN TERMS OF A FEASIBILITY STUDY, GOI APPARENTLY WAS AND MAY STILL BE UNDER IMPRESSION THAT ERDA PLANS TO DELIVER COMPLETE DESIGNS WHICH WOULD ALLOW CONSTRUCTION TO BEGIN IF GOI SHOULD SO ELECT. ON THE OTHER HAND, GOI RECOGNIZES THAT MEANINGFUL STUDY CAN BE PERFORMED SHORT OF SUPPLYING COMPLETE DESIGN INFORMATION (PARA 7 REF B). ERDA'S LIMITATIONS AND FACT THAT IT CAN DO NO MORE SHOULD BE STRESSED TO GOI. NEW TEXT (REF A) IS THUS OUR FINAL POSITION ON WORK SCOPE. QUESTIONS RAISED BY AMCONSUL (REF D) ARE ANSWERED HEREIN (PARAS 2,5). END SUMMARY.

2. REF A PROVIDES A COMPLETE REVISED TEXT OF THE PROPOSED TARAPUR SPENT FUEL FEASIBILITY STUDY AGREEMENT. EXPLANATION FOR ALL CHANGES FROM TEXT TRANSMITTED IN REF C AND SUBSEQUENT CABLES FOLLOWS:

CLAUSE 1. USG PREVIOUSLY PROVIDED SUMMARY OF PROPOSED STATEMENT OF WORK IN ERDA -- G.E. DRAFT CONTRACT (REF F, PARA 6). THAT STATEMENT MUST OF COURSE BE MODIFIED IN MINOR WAYS TO CONFORM IT TO GOI - ERDA AGREEMENT. EXPLANATION OF CHANGES IS AS FOLLOWS: IN SUBPARAGRAPH 2 THE PARENTHETICAL EXPRESSION WAS CHANGED TO MAKE THE APPROPRI-

ATE CONNECTION BETWEEN ERDA/GE CLAUSE. SUBPARAGRAPH 3 WAS SIMILARLY CHANGED, I.E. SEVERAL "ORS" DELETED TO REFLECT THE ERDA/GOI COMMITMENT WHEREAS THE ERDA/GE TEXT WILL REFLECT ERDA/GOI COMMITMENT TO GE. SUBPARAGRAPH 4 WAS REWRITTEN IN ORDER TO CLARIFY THE SECOND PORTION OF THE TASK I.E. THAT ERDA WILL REVIEW THE EXISTING USED HARDWARE IN THE POOL. THE PREVIOUS TEXT WAS UNDERSTOOD BY ERDA AND GE BUT MIGHT HAVE BEEN CONFUSING TO A THIRD PARTY. SUBPARAGRAPH 6 - THE WORD "ADDITIONAL" WAS DELETED  
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BECAUSE IT IS UNNECESSARY IN THE CONTEXT OF THE ERDA/GOI AGREEMENT.

THE "PHASE II" DEFINITION WAS CHANGED TO DESCRIBE MORE ACCURATELY WHAT PHASE II IS AND ALSO TO DELETE REFERENCES TO TIMES WHICH WERE UNCLEAR AND SUCCEPTIBLE OF MISINTERPRETATION. PHASE II, SUBPARAGRAPH 5 WAS DELETED BECAUSE IT DESCRIBES GE'S REPORTING REQUIREMENT TO ERDA.

THE OLD UNNUMBERED LAST PARAGRAPH OF CLAUSE 1 FROM REF C IS NOW NUMBERED 5 AND THE PARENTHETICAL PHASE DELETED SINCE "THESE STUDIES" ARE NOT MENTIONED AGAIN IN THE REVISED TEXT.

CLAUSE 2. IS REVISED BY INSERTING "INCLUDING ITS CONTRACTOR AND SUBCONTRACTOR" AFTER "AUTHORIZED ERDA REPRESENTATIVE" SO THAT SUCH ENTITIES WILL BE ASSURED OF RECEIPT OF APPROPRIATE AND NECESSARY DATA.

CLAUSE 3. UNCHANGED.

CLAUSE 4. THE PHRASE "FOR CONSULTATION AND ASSISTANCE IS INSERTED AFTER "MOREOVER, GOI WILL MAKE AVAILABLE" TO MAKE CLEAR OUR NEED FOR THE INDIAN TECHNICAL AND SCIENTIFIC PERSONNEL. CLAUSE 4(A). DELETED BECAUSE IT DOES NOT REFLECT CLAUSE 1 OR THE USG SCOPE WORK.

CLAUSE 5. REFERENCE THEREIN TO CLAUSE 4(A) IS CHANGED TO CLAUSE 1 BECAUSE OF DELETION OF CLAUSE 4(A). THE OTHER CHANGE IN 5 IS THE SUBSTITUTION OF THE WORD "DISCUSS" IN LIEU OF THE WORD "DISCLOSE". DISCLOSE IMPLIES THAT ERDA WILL REVEAL SOMETHING "SECRET". THERE IS NOTHING "SECRET" HERE AND WHAT ERDA EXPECTS TO DO IS DISCUSS THE FINDINGS OF THE STUDY IN RELATION TO U.S. CRITERIA.  
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CLAUSE 6. UNCHANGED.

CLAUSE 7. SUBPARAGRAPH A(2). LINE 4 OF REF C HAS A TYPOGRAPHICAL ERROR "ACA". THIS HAS BEEN CORRECTED TO

READ "ALL".

CLAUSE 8. CHANGES IN CLAUSE 8 ARE ESSENTIALLY EDITORIAL. FIRST PARAGRAPH D, WHICH SPECIFIES THAT REFERENCE TO ERDA AND GOI INCLUDES THEIR CONTRACTORS AND SUBCONTRACTORS, IS MOVED TO THE BEGINNING AND REDESIGNATED AS PARAGRAPH A. TO BE CONSISTENT WITH THE HEADING OF CLAUSE 8, THE REFERENCE TO "PROPRIETARY INFORMATION ARTICLE" IS CHANGED TO "EXCHANGE OF INFORMATION ARTICLE". OTHER PARAGRAPHS ARE REDESIGNATED ACCORDINGLY. BY SETTING THE FOREGOING UNDERSTANDING AT BEGINNING, WE ELIMINATE NEED FOR REPETITIVE REFERENCE TO CONTRACTORS AND SUBCONTRACTORS. A SECOND CHANGE CONCERNS CLAUSE 8A, WHICH REFERRED TO "EXPERTS DESIGNATED BY THEM" (ERDA AND GOI). THE PHRASE "EXPERTS DESIGNATED BY THEM" (ERDA AND GOI, IS NOWHERE DEFINED BUT AS A PRACTICAL MATTER IT MEANS CONTRACTORS OR SUBCONTRACTORS. THEREFORE, WE HAVE SUBSTITUTED THE WORDS "CONTRACTORS OR SUBCONTRACTORS" FOR "EXPERTS DESIGNATED BY THEM". AS A THIRD CHANGE, WE ADDED A PHRASE TO 8C (NOW 8D) TO ELIMINATE AN AMBIGUITY. AS PRESENTLY DRAFTED, 8C REFERS TO NEED FOR "CONSENT OF THE PARTY ORIGINATING SUCH INDUSTRIAL PROPERTY ..." YET A PARTY MAY HAVE RIGHTS IN INDUSTRIAL PROPERTY WITHOUT HAVING ORIGINATED SUCH PROPERTY. TO REMEDY THIS PROBLEM THE PHRASE IS REVISED AS FOLLOWS: "CONSENT OF THE PARTY ORIGINATING, OWNING, OR HAVING RIGHTS TO SUCH INDUSTRIAL PROPERTY..." WE NOTE THAT GOI SUGGESTION "FOR" IN PLACE OF "OF" COULD BE INTERPRETED TO BROADEN STUDY TO PERMIT ASSISTANCE IN CONSTRUCTING ADDITIONAL POOLS RATHER THAN EXPANDING CAPACITY OF EXISTING POOL AS IS NOW CONTEMPLATED. THIS RAISES POTENTIAL POLICY AND LEGAL PROBLEMS WHICH SHOULD BE UNCLASSIFIED

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PURSUED, IF GOI SO WISHES IN DISCUSSIONS SEPARATE FROM THIS AGREEMENT.

CLAUSE 9. CHANGES IN CLAUSE ARE REQUIRED DUE TO INDEMNITY CONCERNS, RAISED BY G.E., NOT TREATED IN GOI LEGAL OPINION. EXCEPT FOR EDITORIAL CHANGES WHICH SHOULD NOT TROUBLE GOI, ONLY CHANGE IS ADDITION OF A FINAL SENTENCE AS FOLLOWS: "THIS INDEMNITY SHALL APPLY REGARDLESS OF FAULT (OF WHAT-EVER DEGREE) ON THE PART OF ERDA, ITS CONTRACTORS OR SUBCONTRACTORS AND SHALL BE ENFORCEABLE DIRECTLY AGAINST THE GOVERNMENT OF INDIA BY SUCH CONTRACTORS AND SUBCONTRACTORS." G.E.'S REASONS FOR REQUIRING THIS NEW SENTENCE ARE AS FOLLOWS:

(1) UNDER U.S. LAW, WHICH GOVERNS THIS AGREEMENT, INDEMNITY COULD BE FORECLOSED IF THE DAMAGE OR INJURY RESULTED FROM NEGLIGENCE. G.E. INSISTS ON REMOVING DOUBT ON THIS SCORE BY AN EXPRESS STATEMENT; AND (2) G.E. ALSO ASSERTS THAT SINCE INDIAN LAW IS UNCLEAR ON SUBJECT

OF THIRD PARTY BENEFICIARIES AND GOI LEGAL OPINION IS SILENT THEREON, NEW SENTENCE IS NECESSARY TO CLARIFY G.E.'S RIGHTS UNDER CLAUSE 9. THUS G.E. REQUIRES ASSURANCE THAT IT CAN PROCEED DIRECTLY TO ENFORCE RIGHTS UNDER CLAUSE 9 RATHER THAN RELYING ON ERDA. NEW SENTENCE IS IN ESSENCE G.E.'S PRICE FOR PROCEEDING AND IS NOT NEGOTIABLE.

CLAUSE 10. UNCHANGED.

CLAUSE 11. UNCHANGED.

CLAUSE 12. UNCHANGED.

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CLAUSE 13. UNCHANGED.

CLAUSE 14. UNCHANGED.

3. THE QUESTION RAISED BY SHAH IN REF D, PARA B WAS ADDRESSED IN REF E. AS A RESULT OF OUR FURTHER DISCUSSIONS WITH G.E., IT IS CLEAR THAT THE PRICE OF THE GE PROPRIETARY DATA IS 1.) ACCEPTANCE OF THE REVISED CLAUSE 9 (WITH AFFIRMATION OF SUPPORTING LEGAL "OPINION"). AND 2.) A MONETARY AMOUNT TO BE PAID BY ERDA TO BE ESTABLISHED WHEN THE PRECISE LIST OF PROPRIETARY DATA IS KNOWN. THE LIST OF PROPRIETARY DATA WILL, OF COURSE, NOT BE COMPLETE UNTIL THE FINAL REPORT IS PREPARED. SINCE, HOWEVER, ERDA IS OFFERING TO ASSUME THIS PRICE IT SHOULD BE NO FURTHER PROBLEM FOR THE GOI. USG MUST, HOWEVER, MAKE CLEAR TO DAE THAT THE PROPRIETARY DATA DESCRIBED IN PARAGRAPH 6 BELOW WHILE AVAILABLE FOR APPLICATION AT TARAPUR BEYOND THE FEASIBILITY STUDY (IN ACCORDANCE WITH CLAUSE 8E) MAY BE INSUFFICIENT FOR A FINAL DESIGN. THEREFORE, SHOULD THE GOI DETERMINE THAT ADDITIONAL GE PROPRIETARY DATA WAS NEEDED, THEY WOULD STILL HAVE A POSSIBLE NEED TO DEAL WITH G.E.

4. THE MEANING OF CLAUSE 1 OF THE USG/GOI AGREEMENT WITH RESPECT TO THE WORDS "...CONDUCT A STUDY COVERING THE SPENT FUEL STORAGE CAPACTIY OF THE TARAPUR ATOMIC POWER STATION" MERITS SPECIAL ATTENTION. THIS ISSUE WAS RAISED EXPLICITLY IN REF B PARA 2. ERDA INTENDS THAT THE PROSPECTIVE STUDY BE A FEASIBILITY STUDY ONLY AND NOT GO INTO SUCH DEPTH AS TO INCLUDE ACTUAL DESIGN. IN THIS CONTEST THE WORDS "...AND METHOD..." ARE INTENDED TO MEAN DESCRIPTIONS OF OPTIONS WHICH COULD POTENTIALLY BE APPLIED TO A POSSIBLE FUTURE POOL MODIFICATION. THE EXTENT OF THESE DESCRIPTIONS DO NOT GO TO SUCH DEPTH OF COMPLETENESS AS TO COMPRISE DESIGN. ERDA LACKS BUDGET AUTHORIZATION

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FOR DESIGN WORK REGARDING TARAPUR AND, MOREOVER, IT MAY WELL LACK LEGAL AUTHORITY FOR SUCH WORK.

5. SINCE TEXT OF PROPOSED AGREEMENT IS DIFFERENT FROM THAT WHICH WAS SUBJECT OF GOI LEGAL OPINION, WE NEED GOI STATEMENT THAT LEGAL OPINION IS UNCHANGED. IN PARTICULAR, G.E. REQUIRES ASSURANCE THAT GOI LEGAL OPINION IS NOT ALTERED BY ADDITION OF NEW FINAL SENTENCE TO CLAUSE 9.

6. IN RESPONSE TO PARA (A) OF REF D WE HAVE BEEN INFORMED BY GE THAT THE PROPRIETARY INFORMATION WHICH MAY BE INCLUDED IN THE STUDY CAN BE DESCRIBED IN TWO CATEGORIES AS FOLLOWS:

(1) DESIGN-TYPE INFORMATION:

(A) SPECIAL ARRANGEMENTS OF TUBES AND SUPPORT CASTINGS APPLIED TO CLOSE-PACKED RACKS.

(B) SPECIFIC LOW-FREQUENCY RACK SUPPORTS.

(2) ANALYSIS RESULTS:

(A) ASSESSMENT OF MODELS AND DERIVATIONS FOR STRUCTURAL LOADS DEVELOPED USING GE-PROPRIETARY WATERNASS AND SEISMIC-DYN COMPUTER CODES.

(B) ASSESSMENT OF MODELS AND DERIVATIONS FOR CRITICALITY ANALYSES DEVELOPED USING GE-PROPRIETARY MERIT COMPUTER CODE.

(C) ASSESSMENT OF MODELS AND DERIVATIONS FOR COOLING WATER ANALYSES MADE USING GE-PROPRIETARY REX-66 AND REX-60 COMPUTER CODES.

7. PLEASE ADVISE SOONEST. VANCE

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<< END OF DOCUMENT >>

## Message Attributes

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**Type:** TE  
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